

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 14, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA HAND DELIVERY

Re: SOAH Docket No. 582-11-1574, TCEQ Docket No. 2010-1817-UCR; In Re: Appeal of Trent Water Works Inc. from the Ratemaking Actions of The Village Of Jones Creek and Motion For Interim Rates; Certificate of Convenience and Necessity No. 11050

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than October 4, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than October 24, 2011.

This matter has been designated **TCEQ Docket No. 2010-1817-UCR; SOAH Docket No. 582-11-1574**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard R. Wilfong".
Richard R. Wilfong
Administrative Law Judge

RRW/llg
Enclosures
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: CLAYTON TRENT / TRENT WATER WORKS

SOAH DOCKET NUMBER: 582-11-1574

REFERRING AGENCY CASE: 2010-1817-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ RICHARD WILFONG

REPRESENTATIVE / ADDRESS

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VILLAGE OF JONES CREEK

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TRENT WATER WORKS

xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-11-1574
TCEQ DOCKET NO. 2010-1817-UCR**

APPEAL OF TRENT WATER WORKS INC. FROM THE RATEMAKING ACTIONS OF THE VILLAGE OF JONES CREEK AND MOTION FOR INTERIM RATES; CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11050	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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PROPOSAL FOR DECISION

Trent Water Works, Inc. (Trent) filed this appeal of the ratemaking action of the Village of Jones Creek (Village) denying Trent a water rate/tariff change for water service to customers inside the Village. The Administrative Law Judge (ALJ) recommends that the Commission approve the surcharge for recovery of rate case expenses and lost revenues as requested by Trent.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 29, 2010, the Village passed Ordinance No. 433 indefinitely suspending Trent's proposed water rate increase, effectively denying the rate change.¹

On October 21, 2010, Trent filed its appeal of the Village's ratemaking action with the Texas Commission on Environmental Quality (TCEQ or Commission).

On November 3, 2010, the Commission referred the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

On February 8, 2011, a preliminary hearing was held and jurisdiction was proven. Trent appeared through Oscar B. Jackson, III, attorney. The TCEQ Executive Director (ED) appeared through Jose Caso, attorney. The Office of Public Interest Counsel (OPIC) appeared through Scott Humphrey, attorney.

¹ Motion for Summary Disposition - Exhibit C.

On March 22, 2011, the ALJ issued Order No. 2, granting the Village's motion for party status.

On May 10, 2011, the ALJ issued Order No. 3, denying the Village's plea to the jurisdiction that was filed on April 1, 2011.

On August 10, 2011, Trent filed a motion for summary disposition. Trent alleged that on July 19, 2011, the Village adopted Ordinance No. 443, repealing the previous Ordinance No. 433 that denied Trent's water rate change.² Thus, Trent contended that the reasonableness of its rates are no longer at issue and are, therefore, deemed proper, leaving as the sole remaining issues the determination of the appropriate rate case expense reimbursement and surcharges for lost revenues. Neither the Village, the ED, nor OPIC responded to Trent's motion for summary disposition.

The ALJ proposes that the Commission grant the motion for summary disposition because he finds Trent's lost revenues, rate case expenses, and proposal for recovery through a surcharge are just and reasonable.

II. JURISDICTION

The Village's plea to the Commission's jurisdiction was denied by the ALJ's Order No. 3 issued on May 10, 2011, without appeal. No other party disputed the jurisdiction of either the Commission or SOAH. The attached Proposed Order contains the necessary findings and conclusions concerning jurisdiction.

III. APPLICABLE LAW

Commission rule 80 TEX. ADMIN. CODE (TAC) § 80.137(c) provides:

² Motion for Summary Disposition - Exhibit D.

Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.

As set out below, there is no genuine issue as to any material fact. Thus, Trent is entitled to summary disposition.³

Pursuant to TEX. WATER CODE ANN. § 13.043(a), the Commission is authorized to order recovery of: (1) expenses incurred in the appeal proceedings, and (2) lost revenues, through a surcharge.

IV. THE UTILITY'S RATE CASE EXPENSES

Trent's summary disposition evidence established rate case expense of \$7,000.00 relating to its appeal from the Village's action denying Trent's proposed water rate change. Trent's rate case expense is not disputed by any party, and the ALJ finds that Trent should be allowed to recover rate case expense in the amount of \$7,000.00.⁴

V. THE UTILITY'S LOST REVENUES

For the 12 months from July 2010 to July 2011, Trent was unable to charge its proposed water rates to customers within the Village due to the Village's actions in denying the proposed rate change. During that time Trent was denied recovery of \$33,279.37. Trent's lost revenues

³ See also, TEX. R. CIV. P. 166(a)(c).

⁴ Motion for Summary Disposition - Exhibit A, Affidavit of Oscar B. Jackson in support of attorney's fees.

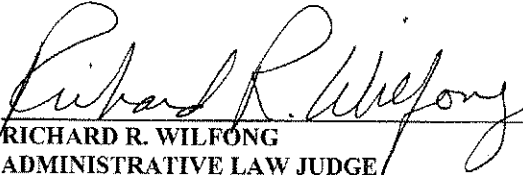
are not disputed by any party, and the ALJ finds that Trent should be allowed to recover lost revenues in the amount of \$33,279.37.⁵

VI. PROPOSED SURCHARGE IS JUST AND REASONABLE

Trent proposes to recover a total of \$40,279.37 via a monthly surcharge of \$10.90 to each of its customers within the Village over the next 12 months or until Trent fully recovers \$40,279.37, whichever first occurs. The ALJ finds Trent's proposal to recover its rate case expense and lost revenues from customers within the Village through a surcharge of \$10.90 a month for up to 12 months to be just and reasonable.

Accordingly, The ALJ recommends that the Commission adopt the attached Proposed Order finding that the proposed surcharge is just and reasonable and granting the motion for summary disposition.

SIGNED September 14, 2011.


RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

⁵ Motion for Summary Disposition - Exhibit B, Business records affidavit of Pam Shockley and attached records.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

**GRANTING THE APPEAL OF TRENT WATER WORKS, INC. FROM THE ACTIONS
OF THE VILLAGE OF JONES CREEK AND MOTION FOR INTERIM RATES;
CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11050
SOAH DOCKET NO. 582-11-1574
TCEQ DOCKET NO. 2010-1817-UCR**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the appeal of Trent Water Works, Inc. (Trent) from the ratemaking actions of the Village of Jones Creek (Village) and motion for interim rates under Certificate of Convenience and Necessity No. 11050. A Proposal for Decision (PFD) was presented by Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a preliminary hearing in this case on February 8, 2011, in Austin, Texas. After granting the Village party status and an opportunity to reply, the ALJ recommended that the Commission grant Trent's Motion for Summary Disposition for approval of a surcharge for recovery of rate case expenses and lost revenues.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History

1. Trent Water Works, Inc. (Trent) is an investor-owned public water utility that provides retail water utility service under Certificate of Convenience and Necessity No. 11050, to customers within the municipal limits of the Village of Jones Creek (Village), among others.

2. The Village is a political subdivision of the state that is a Type A general law municipality and is the “regulatory authority” with original jurisdiction over Trent’s rates and services within the corporate limits of the Village.
3. On July 29, 2010, the Village passed Ordinance No. 433, indefinitely suspending Trent’s proposed rates that were to be effective on July 15, 2010. It also required Trent to refund the amount of the rate increase collected from customers in the Village prior to the passage of Ordinance No. 433, thereby indefinitely denying Trent’s proposed rate change.
4. On October 21, 2010, Trent filed an appeal of the ratemaking action of the Village denying Trent a water rate/tariff change inside the Village pursuant to Ordinance No. 433.
5. On November 5, 2010, the Commission’s Chief Clerk referred the appeal to SOAH for hearing.
6. On December 21, 2010, the Commission’s Notice of Hearing was mailed by the Chief Clerk to Trent, the Executive Director (ED), and the Office of Public Interest Counsel (OPIC).
7. On January 21, 2011, Trent mailed a Notice of Hearing to each of its ratepayers and affected municipalities.
8. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. On February 8, 2011, the ALJ held a preliminary hearing as indicated in the Notice of Hearing, and jurisdiction was proven. The following appeared and were admitted as parties:

PARTY	REPRESENTATIVE
Trent	Oscar B. Jackson III
ED	Jose Caso
OPIC	Scott Humphrey

10. On March 22, 2011, the ALJ issued Order No. 2, granting the Village's motion for party status.
11. On May 10, 2011, the ALJ issued Order No. 3, denying the Village's Plea to the Jurisdiction.
12. On July 19, 2011, the Village passed Ordinance No. 443 which retroactively repealed Ordinance No. 433.
13. On August 10, 2011, Trent filed a Motion for Summary Disposition arguing that by the passage of Ordinance No. 443, retroactively repealing Ordinance No. 433, the reasonableness and necessity the proposed rate change is no longer an issue. Therefore, Trent sought recovery of its rate case expense and lost revenues during the 12 months, July 2010 to July 2011, that it was denied recovery of the rate increase from customers in the Village due to the ratemaking action of the Village.
14. Trent's Motion for Summary Disposition was not opposed by any party.

Rate Case Expenses and Lost Revenues

15. Trent's rate case expense of \$7,000.00 is just and reasonable.
16. During the 12 months, July 2010 to July 2011, Trent was entitled to recover increased rates of \$33,279.37 from its customers in the Village.
17. Trent's proposal to recover its rate case expense of \$7,000.00, and lost revenues of \$33,279.37, without interest, via a surcharge to its customers in the Village at the rate of \$10.90 per month for the next 12 months, is just and reasonable.

II. CONCLUSIONS OF LAW

1. Trent Water Works, Inc., is a retail public utility under TEXAS WATER CODE ANN. (Water Code) § 13.002(19) and a public utility under Water Code § 13.002(23).
2. The Commission has jurisdiction of an appeal from a municipality's denial of a rate increase filed by a retail public water utility in accordance with Water Code § 13.043(a) and 30 Tex. Admin. Code (TAC) § 291.41(a).
3. All required notices of the appeal and the preliminary hearing on it were given as required by law, including Water Code § 13.187 and TEX. GOV'T CODE ANN. (Government Code) §§ 2001.051 and 2001.052.
4. The ALJ conducted a preliminary hearing and issued a Proposal for Decision under the authority of chapter 2003 of the Government Code and chapter 13 of the Water Code.
5. Commission rule 80 TAC § 80.137(c) provides:

Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.

6. The material facts set out in the above Findings of Fact are not disputed.
7. Based on the above Findings of Fact and Conclusions of Law, the proposed surcharge is just and reasonable.
8. Based on the above Findings of Fact and Conclusions of Law, the Trent's Motion for Summary Disposition should be granted.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. The Motion for Summary Decision filed by Trent Water Works, Inc., to recover rate case expense of \$7,000.00 and lost revenues of \$33,279.37 from its customers in the Village of Jones Creek via a surcharge of \$10.90 a month for the next 12 months is granted.
2. The Chief Clerk of the Commission shall forward a copy of this Order to each party.
3. All other motions, requests for specific Findings of Fact or Conclusions of Law, and other requests for general and specific relief, if not expressly granted, are denied for want of merit.
4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.
5. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Government Code § 2001.144.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw Ph.D, Chairman
For the Commission